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***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION***

WRIT PETITION NO. 4828 OF 2016

Tejas Kishore Mashruwala.

... Petitioner.

V/s.

Nayana Harish Mashruwala.

... Respondent.

Mr. G.S. Godbole a/w. Aditya Thakkar, Deepak Shukla and Ms. Swapna Samant i/b. Vinod Mistry & Co. for the Petitioner.

Mr. Kishore Jain i/b. Mehul Shah for the Respondent.

CORAM : N.M. Jamdar, J.

04 October, 2016.

Oral Order :-

The Petitioner challenges the order passed by the learned City Civil Court, Mumbai granting conditional leave to defend to the Petitioner upon depositing Rs.60,00,000/- in the Court within one month from the date of the order.

2. Parties are related. The Respondent is the aunt of the Petitioner. Summary Suit bearing No. 193 of 2010 has been filed by the Respondent seeking recovery of Rs.60,00,000/-. It is the case of

the Respondent that an amount of Rs.60,00,000/- was advanced to the Petitioner by way of cheque which is also reflected in book of accounts which has been counter-signed by the Petitioner and inspite of this position, the Petitioner is not returning the amount. By the impugned order the learned City Civil Court Judge has granted conditional leave on deposit of Rs.60,00,000/-.

3. The learned Counsel for the Petitioner submitted that the amount was given pursuant to a family arrangement entered in the year 2008 between the entire family and there were various transactions. Partnership firms have been closed and it was agreed to hand over books of accounts and exchange of funds, etc. in pursuant to the family arrangement. The learned Counsel submitted that the Petitioner, alongwith others, has also filed a suit on the Original Side of this Court for a declaration that a binding contract exist between the parties as in the form of family agreement dated 31 March 2008 and various other reliefs are sought based on the said documents. The learned Counsel for the Respondent supported the impugned order.

4. The Summary Suit was filed on 22 December 2009. The Suit is filed by the Petitioner much thereafter in this Court on 11 January 2011. The amount is given to the Petitioner by way of a cheque and there is also an endorsement by the Petitioner in the

accounts acknowledging the receipt. The case put forth by the Petitioner is of family arrangement of the year 2008. If this was a family arrangement took place in the year 2008, nothing has placed on record that any transfer of funds took place except stating that there was closure of some partnership firms. Therefore, prima facie the family arrangement is put forth as a defence only after a summary suit has been filed. The learned Counsel for the Petitioner submitted that for almost one and half years there was no correspondence between the parties regarding the amount which was claimed in the suit. The parties are closely related and therefore, the lack of documentation for period of one year can be explained in the normal course human conduct where parties may not immediately enter into written correspondence. In any case amount is advanced by cheque. Therefore, the situation is that the amount is received by cheque, the theory of family arrangement is only the version of the petitioner and nothing has been shown that any member of the family has acted upon this family arrangement or exchanged any correspondence for last eight years.

5. In the circumstances, the discretion used by the learned City Civil Court Judge in granting conditional leave cannot be stated to be perverse. No interference therefore is warranted under Article 227 of the Constitution of India. The Writ Petition is accordingly rejected.

6. The learned Counsel for the Petitioner seeks three months' time to deposit the amount and seeks protection during this period. Query was put to the learned Counsel for the Petitioner whether the time is sought to deposit the amount or challenge the order higher, because in the second contingency, I am not inclined to grant time more than 2-3 weeks. The learned Counsel for the Petitioner on instructions from Mr. Deepak Shukla, the attorney, who is present, states that the attorney has already taken instructions that the time is sought only for depositing the amount and to abide by the order. This statement on instructions is accepted. The Petitioner is granted three months' time to deposit the amount directed by the learned City Civil Court Judge.

7. It is clarified that the observations made in this order and the impugned order are in the context of grant of leave and the summary suit will be decided on its own merits, so also the other litigations pending between the parties.

(N.M. Jamdar, J.)